

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CYDE MARIE ESTES,

Plaintiff,

v.

PROVIDENCE HEALTH &  
SERVICES - WASHINGTON, d/b/a  
PROVIDENCE ST. MARY  
MEDICAL CENTER, and  
d/b/a PROVIDENCE MEDICAL  
GROUP SOUTHEAST  
WASHINGTON NEUROSURGERY,  
and JASON A. DREYER, D.O., and  
LAURA MICHELLE DREYER,  
husband and wife and the marital  
community thereof,

Defendants.

CASE NO: 4:21-CV-5042-TOR

SECOND AMENDED JURY  
TRIAL SCHEDULING ORDER

BEFORE THE COURT is the Parties' Stipulated Motion Re: Amended Jury  
Trial Scheduling Order and Motion to Expedite the same. ECF Nos. 121, 122.  
The Court reviewed the stipulated motion and grants the same. The unexpired

1 deadlines in the Amended Jury Trial Scheduling Order (ECF No. 48) are amended  
2 as follows:

3 \* \* \*

4 **4. Rule 26(a)(2) Expert Identification and Reports**

5 The parties are cautioned that failure to timely identify experts or provide  
6 reports in accordance with Rule 26 and this scheduling order may result in  
7 exclusion of such testimony absent good reason. *See Wong v. Regents of the Univ.*  
8 *of Cal.*, 410 F.3d 1052 (9th Cir. 2005).

9 **A. Plaintiff - Initial Expert Disclosures**

10 Each Plaintiff shall identify its experts and serve those experts' Rule  
11 26(a)(2) reports on all other parties no later than **November 6, 2023**. Each  
12 Plaintiff shall also provide dates for which those experts can be available for  
13 deposition.

14 **B. Defendant - Initial Expert Disclosure**

15 Each Defendant shall identify its experts and serve those experts' Rule  
16 26(a)(2) reports on all other parties no later than **November 6, 2023**. Each  
17 Defendant shall also provide dates for which those experts can be available for  
18 deposition.

1                   **C. Rebuttal Expert Disclosure**

2           Each Party shall identify its rebuttal experts and serve those experts' Rule  
3 26(a)(2) reports on all other parties no later than **January 22, 2024**. Each Party  
4 shall also provide dates for which those experts can be available for deposition.

5                   **5. Discovery Cutoff**

6                   **A. Generally**

7           All discovery, including depositions and perpetuation depositions, shall be  
8 completed by **April 22, 2024** ("Discovery Cutoff"). To be timely, discovery  
9 requests must be served sufficiently in advance of the deadline to allow for timely  
10 response by the cutoff date. The parties shall not file discovery, except those  
11 portions necessary to support motions or objections.

12                   **B. Depositions, Interrogatories, Requests for**  
13                   **Production/Admission**

14           Unless otherwise stipulated, no more than 10 depositions up to seven hours  
15 long, may be taken by the plaintiffs, or by the defendants, or by third-party  
16 defendants. Fed. R. Civ. P. 30(a)(2)(A) and (d)(1).

17           Unless otherwise stipulated, any one party may serve no more than 25 written  
18 interrogatories, including discrete subparts, on any other party. Fed. R. Civ. P.  
19 33(a)(1) and advisory committee notes (1993) explaining "discrete subparts".  
20

1 Unless otherwise stipulated, any one party may serve no more than **45**  
2 requests for production, including discrete subparts, on any other party. LCivR  
3 34(d) (modified by this Court Order).

4 Unless otherwise stipulated, any one party may serve no more than 15  
5 requests for admission, including discrete subparts, on any other party. LCivR  
6 36(c).

7 A party needing relief from these limitations should timely seek relief from  
8 the Court by motion.

### 9 **C. Protective Orders**

10 Any stipulation or motion for a confidentiality agreement or protective order  
11 must be timely filed so as not to delay the discovery process or the Court's  
12 deadlines. If confidential records are attached to court filings, "compelling  
13 reasons" must be shown to seal records attached to a dispositive motion and "good  
14 cause" must be shown to seal records attached to a non-dispositive motion.  
15 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-80 (9th Cir.  
16 2006).

### 17 **D. Motions to Compel**

18 To avoid wasted time and expense, the parties may contact chambers to  
19 schedule a telephonic conference to obtain an expedited ruling on discovery  
20 disputes. Motions to compel seeking sanctions shall be filed in writing.

1           **6. Dispositive and *Daubert* Motions**

2           All dispositive and *Daubert* motions shall be filed on or before **April 26,**  
3 **2024.** Responses and replies to dispositive and *Daubert* motions shall comply with  
4 LCivR 7. No supplemental responses or supplemental replies to any dispositive or  
5 *Daubert* motion may be filed without Court permission.

6           Dispositive and *Daubert* motions shall be noted for hearing at least **fifty (50)**  
7 **days** after the date of filing.

8           **7. Motion Practice**

9                   **A. Notice of Hearing**

10          Parties are to comply with LCivR 7(i) when noting motions for hearing. If  
11 oral argument is sought by a party, counsel shall first confer and determine an  
12 agreeable hearing date and time, and then contact chambers to confirm the Court's  
13 availability for the agreed upon hearing date and time. All non-dispositive motion  
14 hearings shall be conducted telephonically, unless in-person argument is approved  
15 by the Court. The parties may use cellular phones for telephonic hearings, but not  
16 in speaker mode and phones must be muted unless addressing the Court.  
17 Dispositive motion hearings in which oral argument has been requested will be set  
18 for in-person appearance, unless otherwise directed by the Court.

19                   **B. Motions to Expedite**

20          If there is a need to have a motion heard on an expedited basis, the party must

1 file a motion to expedite and an accompanying memorandum (or declaration)  
2 establishing the need for an expedited hearing. The motion shall be noted for  
3 hearing, without oral argument, no earlier than seven (7) days after the filing of the  
4 motion, or two (2) days after the date of filing with prior permission from the  
5 Court. Pursuant to local rule, motions (including stipulated motions) may **not** be  
6 noted for hearing for the same they are filed.

### 7 **C. Citing Previously-Filed Documents**

8 All references to a previously filed document shall cite to the electronic case  
9 filing (ECF) record number and page number within that ECF record, in the  
10 following format, “ECF No. \_\_ at \_\_.” Such documents shall not be attached as  
11 exhibits.

### 12 **D. Reliance on Deposition Testimony**

13 When a party relies on deposition testimony to support a position it takes in  
14 support or opposition to an issue, that party shall provide the Court with the  
15 pertinent excerpts of the deposition testimony relied upon and shall cite to page  
16 and line numbers of the deposition it believes supports its position. *See generally*  
17 *LCivR 56(c)*. Submission of the entire deposition and/or failure to cite to specific  
18 portions of the deposition may result in the submission being stricken from the  
19 record. *See Orr v. Bank of America*, 285 F.3d 764, 774-75 (9th Cir. 2002).

### 20 **E. Supplemental Responses or Replies**

1 No supplemental responses or supplemental replies to any motion may be  
2 filed unless the Court grants a motion to file such documents.

### 3 **F. Motions to Reconsider**

4 Motions to reconsider are disfavored. Motions must show manifest error in  
5 the prior ruling or reveal new facts or legal authority which could not have been  
6 brought to the Court's attention earlier. The motion shall be noted for expedited  
7 hearing without oral argument seven days after it is filed. No response to a motion  
8 for reconsideration need be filed unless requested by the Court. No motion for  
9 reconsideration will be granted without such a request by the Court.

### 10 **G. Decisions on Motions**

11 The parties may call to inquire about the status of a decision on a motion if  
12 the Court has not issued an order within **thirty (30) days after** the hearing on the  
13 motion.

## 14 **8. Witness/Exhibit Lists**

15 Witness/Exhibit lists shall be filed and served and exhibits made available for  
16 inspection or copies provided to the parties on or before **April 24, 2024**.

### 17 **A. Witness Lists**

18 Witness lists shall include a brief description of the witness, a brief summary  
19 of the witness' anticipated testimony, whether the witness will be called as an  
20 expert, and any known trial date/time conflicts the witness may have.

1                   **B. Exhibit Lists**

2           Exhibit lists shall include a brief description of the exhibit. All exhibits shall  
3 be pre-marked; Plaintiffs' exhibits shall be numbered 1-499; Defendants' exhibits  
4 shall be numbered 500-999. Exhibits shall be marked in the lower right corner of  
5 the exhibit when practicable.

6                   **C. Objections**

7           Objections to witnesses/exhibits shall be filed and served on or before **May**  
8 **10, 2024, AND SHALL BE HEARD AT THE PRETRIAL CONFERENCE.** All  
9 objections to witnesses shall set forth a legal basis and explanation for the  
10 objection. Objections to an exhibit or portion thereof, shall be accompanied by a  
11 full and complete copy of the exhibit in question and a short legal explanation for  
12 the objection. The party seeking the admission of the witness or exhibit has five  
13 (5) days, excluding federal holidays and weekends, to file a response to the  
14 opposing party's objection; no reply shall be filed.

15                   **9. Deposition Designations**

16                   **A. Generally**

17           Designation of substantive, as opposed to impeachment, deposition or prior  
18 testimony to be used at trial shall be highlighted in yellow by Plaintiff or in blue by  
19 Defendant in a complete transcript of the deposition or prior testimony and served  
20 but not filed on or before **April 26, 2024.**

1                   **B. Cross-Designations**

2           Cross-designations shall be highlighted in yellow by Plaintiff or in blue by  
3 Defendant in the transcript containing the opposing party's initial designations and  
4 shall be served but not filed on or before **May 3, 2024**.

5                   **C. Objections**

6           All objections to designated deposition or prior testimony and the legal bases  
7 for the objections, shall be filed and served on or before **May 10, 2024**. Any  
8 designated deposition or prior testimony objected to shall be underlined in black in  
9 a complete yellow/blue highlighted copy of the deposition/prior testimony  
10 transcript described above. A paper copy of the underlined document shall be filed  
11 and served with the objections. The party seeking admission of the testimony has  
12 five (5) days, excluding federal holidays and weekends, to file a response; no reply  
13 shall be filed. If the deposition was videotaped, and the videotape is to be used at  
14 trial, the party seeking to use the videotaped deposition shall indicate the relevant  
15 portion on both the written transcript and the videotape. Similarly, objections shall  
16 be made on the written transcript as explained above along with the applicable time  
17 stamp on the video tape noted. All objections to deposition and prior testimony  
18 designations shall be heard and resolved at the pretrial conference with the  
19 videotape available for display.  
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1           **10. Motions in Limine**

2           All unresolved substantive or evidentiary issues that may foreseeably arise  
3 during trial shall be addressed by motions in limine to be filed and served on or  
4 before **May 3, 2024**. Such motions will be addressed and resolved at the pretrial  
5 conference. However, motions in limine may not reargue issues already decided  
6 by the Court.

7           **11. Pretrial Order**

8                   **A. Generally**

9           A joint proposed pretrial order prepared in accordance with LCivR 16(e) shall  
10 be filed on or before **May 10, 2024**, and a copy e-mailed, in Microsoft Word  
11 format, to “riceorders@waed.uscourts.gov”.

12                   **B. Exhibit List**

13           The list of exhibits contained in the Joint Proposed Pretrial Order shall reflect  
14 the exhibit marking scheme described above. In preparing the Joint Proposed  
15 Pretrial Order, the parties shall confer regarding duplicative exhibits and determine  
16 which party will submit such exhibits for trial.

17           **12. Trial Briefs, *Voir Dire*, and Jury Instructions**

18                   **A. Generally**

19           Trial briefs, requested *voir dire*, and jointly proposed jury instructions shall be  
20 filed and served on or before **May 10, 2024**.

1                   **B. Trial Brief Length**

2                   Trial briefs shall not exceed twenty (20) pages without prior court approval.  
3                   To obtain court approval, a party must file a motion to file an overlength brief,  
4                   demonstrating good cause why supplemental briefing is necessary.

5                   **C. Jury Instructions**

6                   The parties' jointly proposed jury instructions shall include a table of  
7                   contents, preliminary instructions, final substantive instructions, and a verdict  
8                   form. The instructions shall be sequentially numbered and include a citation of  
9                   authority for each. The instructions shall, at a minimum, include instructions  
10                  regarding the elements of each claim or defense, the relief sought, and otherwise  
11                  comply with LCivR 51(a). A party proposing a Jury Instruction that differs from a  
12                  Ninth Circuit Model Civil Jury Instruction should submit a memorandum  
13                  analyzing cases to support the modification.

14                  **D. Individually Proposed Jury Instructions**

15                  If the parties are unable to agree on certain instructions, they are to submit  
16                  individually proposed jury instructions no later than the date the jointly proposed  
17                  instructions are due. All individually submitted proposed jury instructions must  
18                  adhere to the format described above and not repeat the jointly proposed  
19                  instructions.

1                   **E. Objections**

2           Any objections to the opposing party’s individually submitted proposed  
3 instructions must be filed no later than five (5) days, excluding federal holidays  
4 and weekends, after the individual proposed instructions were filed. All objections  
5 shall set forth the basis for the objection and briefly explain why the instruction in  
6 question should not be used or should be altered.

7                   **F. Courtesy Copies**

8           Counsel are instructed to e-mail courtesy copies of their **jointly** and  
9 **individually** proposed jury instructions, in Microsoft Word format, to  
10 “riceorders@waed.uscourts.gov”.

11                   **13. Pretrial Conference**

12           An **in-person** pretrial conference will be held on **May 22, 2024, at 8:30 a.m.,**  
13 in Spokane Courtroom 902. All counsel trying the case must be present at the  
14 pretrial conference.

15                   **14. Trial**

16           The jury trial shall commence on **June 3, 2024, at 8:30 a.m.,** in Spokane  
17 Courtroom 902. Counsel shall appear at 8:30 a.m. on the first day of trial to  
18 address any pending pretrial matters. Jury selection will begin promptly at 9:00  
19 a.m.

1 IT IS SO ORDERED.

2 The District Court Clerk is directed to enter this Order and provide copies to  
3 the parties.

4 DATED April 26, 2023.



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*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge